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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ CS(OS) 626/2005

VEETRA INVESTMEWNTS PVT., LTD ..... Plaintiff

Through: Mr. Amit Bansal, Mr. Akhil Kulshreshta and Ms. Seema Dolo, Advocates.

versus

ATWAL AND ASSOCIATES ..... Defendant

Through

CORAM:
HON'BLE MR. JUSTICE VALMIKI J. MEHTA

O R D E R

% 28.01.2016

I.A.No. 14313/2009 (U/s 5 of the Limitation Act by D-4), I.A. 14312/2009 (for review of the order dated 10.5.2007) & 14314/2009 (U/o 37 R 4 CPC for setting aside the judgment & decree dated 10.5.2007)

1. Though orders in I.A 14313/09 and I.A 14312/09 are deferred, and only I.A. 14314/09 under Order 37 Rule 4 CPC is listed before this Court, it is however noted that in all the three applications essentially the facts are almost identical and which are that the defendant no.4/applicant claims that the judgment and decree dated 10.5.2007 could not have been passed against the defendant no.4 as defendant no.4 was never a partner in the defendant no.1. It bears note that the subject suit under Order 37 CPC was decreed by the judgment dated 10.5.2007, and by which judgment I.A 207/07 filed by

the defendant no.4 for striking of his name was also dismissed because no one appeared for the defendant no.4. In all the three applications essentially the relief sought is that the judgment on merits could not have been passed against the defendant no.4. Therefore, the applications are in the nature of a review of the judgment dated 10.5.2007 that the defendant no.4 should not have been made liable by the judgment dated 10.5.2007 passed by Hon'ble Ms. Justice Gita Mittal.

3. As per Order 47 Rule 5 CPC the application for review has to be heard by the same Judge which passed the judgment, and the language of Order 47 Rule 5 CPC is that no other Judge or Judges of the Court shall hear the same if the Judge who passed the judgment can hear the matter.

4. I may also note that though the application being I.A 207/2007 is titled as under Order 1 Rule 10 CPC for deletion of name of defendant no.4, since this application was filed even before issuing of summons of judgment, heading of the application is immaterial and this application can always be taken as an application for grant of leave to defend, and hence the review can be sought of the judgment dated 10.5.2007 which is passed on the ground that it cannot be said that no leave to defend application was filed by any of the defendants.

5. In view of the above, list these applications before Hon'ble Ms. Justice Gita Mittal, after obtaining orders of Hon'ble the Chief Justice on 1st March. 2016.

VALMIKI J. MEHTA, J

JANUARY 28, 2016
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